

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
LEXCOM TELEPHONE COMPANY)	
)	
Petition for Waiver of Section 54.301(b) Submission Date)	
For Projected 2006 Local Switching Support Data)	
To: Chief, Wireline Competition Bureau		

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

ICORE, Inc., on behalf of Lexcom Telephone Company (“Lexcom”), and pursuant to Section 1.3 of the Commission’s Rules¹, requests waiver of the October 1, 2005 date² established by Section 54.301(b) of the Rules for submission of projected Local Switching Support (“LSS”) data for the 2006 calendar year. Due to unique circumstances, Lexcom provided its projected 2006 LSS data to the Universal Service Administrative Company (“USAC”) by facsimile on October 10, 2005, and by a Federal Express delivery on October 14, 2005. As described herein, a waiver of the filing deadline is justified.

¹ 47 C.F.R. § 1.3

² Given that October 1, 2005 was a Saturday, it appears that the actual Section 54.301(b) filing date for projected 2006 LSS data may have been Monday, October 3, 2005, if USAC is required to follow the holiday adjustments in Section 1.4(j) of the Commission’s Rules. If USAC is not required to follow the holiday adjustment schedule, then this filing may have been due on Friday, September 30, 2005.

I. Background

USAC requires that cost companies and average schedule companies submit projected information that allows USAC to calculate LSS amounts for inclusion in the Universal Service Program for the coming year. USAC requires incumbent local exchange carriers (“LECs”) that have been designated an Eligible Telecommunications Carrier (“ETC”) and serve 50,000 or fewer access lines within a study area to file LSS projections no later than October 1 of the year preceding the calendar year in which the LEC expects to receive LSS. Lexcom is a rural incumbent local exchange carrier (“ILEC”) which serves three local exchanges (Lexington, Southmont and Welcome) in Davidson County in rural central North Carolina. As of September 2005, Lexcom served 30,208 access lines in its single North Carolina study area (Study Area Code 230483).

Lexcom was designated as an ETC by the North Carolina Utilities Commission (“NCUC”) in December 1997. It has been submitting LSS data and other federal High Cost Support forms and reports in timely fashion since these filing requirements were established during the implementation of the Telecommunications Act of 1996. Lexcom has never previously missed a federal universal service filing deadline, or had a federal universal service filing returned as defective or incomplete. Lexcom’s federal universal service data filings and reports have historically been prepared and filed by its consultant³ and its Department of Regulatory and Revenue Assurance (“RRA Department”). For the reasons described below, Lexcom did not submit the 2006 projected data to USAC in time to comply with the requirements of § 54.301(b).

³ For reasons of confidentiality, Lexcom does not wish to identify the consulting firm responsible for their LSS filing. It should be noted that the firm filing the instant petition is not the consultant responsible for filing the 2006 LSS projection.

Lexcom's projected 2006 LSS data was filed four business days late due to a unique set of circumstances involving emergency medical leave and missed communications that was not foreseen by Lexcom and that will not be repeated. The starting point is the fact that a key Lexcom employee, the General Manager of its RRA Department, was out of the office on emergency medical leave for most of September 2005. It should be noted that at the time of this petition, this key employee has still not been cleared by her doctors to return to work. During her absence, the other two members of the RRA Department staff having regulatory compliance responsibilities have had to bear increased burdens and responsibilities during the General Manager's absence, and have been extremely busy as a result. In September, an electronic mail message appears to have been sent to the manager by the consultant regarding the projected 2006 LSS data submission, but such message was never seen by her or by anyone else at Lexcom that would have recognized its significance. It is not clear at this time whether the email failed to reach the RRA Department General Manager at Lexcom, or whether it was overlooked or inadvertently deleted among the thousands of emails that the General Manager periodically accessed and reviewed from her home during her recovery when her health permitted.⁴ Finally, the consultant's staff did not notice that Lexcom's projected 2006 LSS data filing had not been completed and returned for submission to USAC. In past years, the LSS projection had always been filed by the consultant after review of data by one or more Lexcom employees.

On Sunday, October 9, 2005, a voice mail message from USAC was retrieved by the consultant. The voicemail inquired about Lexcom's projected 2006 LSS data submission. On Monday October 10, 2005 (Columbus Day), Lexcom's RRA Department and their consultant searched their files and the USAC website, but could not verify that the filing had been made.

⁴ The General Manager of the RRA Department typically receives more than 200 emails daily.

Lexcom and the consultant proceeded immediately to fax the completed 2006 LSS data submission to USAC's designated facsimile filing number for FCC LSS forms (866-873-4666) that morning. A paper copy of the data submission, together with a signed certification by Lexcom, was sent to USAC's Piscataway, New Jersey office via Federal Express priority envelope on Thursday, October 13, 2005, and delivered to that office at 9:49 AM EDT on Friday, October 14, 2005. Out of an abundance of caution, Lexcom also sent copies of its projected 2006 LSS data submission via Federal Express to the Commission and to USAC's Washington, DC office, where they were delivered on October 19, 2005, and October 18, 2005, respectively.

Lexcom has been informed by USAC representatives that USAC will not process its projected 2006 LSS data submission unless and until the Commission grants Lexcom a waiver of the Section 54.301(b) filing date. USAC's position appears to be that Lexcom will receive no LSS for 2006 unless the Commission grants such waiver.

Lexcom notes again that it has complied fully and in timely fashion with all federal universal service filing requirements and deadlines since the 1996 Act was implemented. Its inadvertent four-business day delay in submitting its projected 2006 LSS data was due ultimately to the unique and unusual disruptions in the functioning of its RRA Department caused by the temporary but unavoidable absence of the Department's General Manager for medical reasons. Lexcom takes the lapse in reporting seriously and has immediately implemented changes designed to ensure this never happens again. In order to make certain that no federal universal service filing requirements are missed in the future, Lexcom is developing calendars, checklists, required email contact lists, and other procedures for its staff and its consultants to ensure that future federal universal service filing requirements and deadlines will be met.

II. Basis for Relief

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest⁵. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of public policy on an individual basis⁶. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. Lexcom submits that the circumstances that lead to the instant request be considered sufficient to warrant the grant of the requested waiver.

A. Special Circumstances Provide Good Cause For Waiver

In *Smithville Telephone Company, Inc.*⁷, the Telecommunications Access Policy Division of the Wireline Competition Bureau granted a rural telephone company a waiver of the October 1, 2003 deadline for the filing of its projected 2004 LSS data. The Division found that the death of the company's president on September 8, 2003, and subsequent management changes gave rise to substantial turmoil which led to an oversight and inadvertent failure to meet the October 1 deadline, and that the absence of the company's regulatory accountant for a substantial portion of November and December 2003 due to illness contributed to further delays in the discovery of the missed deadline until February 10, 2004. The Division found that, in light of these special circumstances, it would be onerous to deny LSS to the rural telephone company for an entire

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)

⁷ 19 FCC Rcd 8891 (WCB May 18, 2004)

year⁸. It also found that the special circumstances affecting the company outweighed any processing difficulties that USAC might face as a result of the late filing (in that case, more than four months)⁹.

The special circumstances affecting Lexcom are substantially similar to those found to constitute good cause for waiver of Section 54.301(b) in the *Smithville Telephone Company* order. The General Manager of Lexcom's RRA Department was required to be out of the office for emergency health reasons for most of the month preceding this year's October 1 LSS filing deadline. Immediately upon discovering that its LSS data had not been filed, Lexcom faxed the required information to USAC¹⁰. The General Manager's substantial and unexpected absence for emergency health reasons led to turmoil and inadvertent oversights substantially equivalent to those found to justify the *Smithville* waiver. Like *Smithville*, Lexcom moved to rectify the problem immediately upon notification. For these reasons alone, the Section 54.301(b) requested by Lexcom should be granted.

In addition, Lexcom's spotless record of compliance with USAC reporting obligations should also factor into the FCC's assessment of this waiver request. Lexcom has never previously missed a USAC deadline. The Commission found this to be a consideration in the recently granted waiver request of *Citizens Communications and Frontier Communications*¹¹. Like Frontier, Lexcom's delay in filing was caused by unique circumstances, was brief, and the error was promptly cured and did not create a hardship for USAC or other fund recipients.

⁸ Id at ¶ 5.

⁹ Id

¹⁰ Lexcom actually filed its LSS projections without a single business day's delay. From receipt of the voice mail from USAC on October 9th to the filing on the Columbus Day holiday (October 10th), there were no completed business days.

¹¹ Citizens Communications and Frontier Communications Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver of FCC Rule Section 54.802(a), Order Released October 27, 2005.

B. No Adverse Impact on USF Administration

Whereas *Smithville* understandably did not file its projected 2004 LSS data until more than four months after the October 1, 2003 deadline, Lexcom filed its projected 2006 LSS data on October 10, 2005 (the Columbus Day holiday), a mere four or five business days after the October 1 (or October 3), 2005 deadline. Lexcom does not believe that this very brief delay could possibly cause any perceptible delays or complications in USAC's processing of the projected 2006 LSS data filed by ILECs on or before this year's deadline, or in USAC's planning for distribution of LSS during 2006.

Lexcom notes that the October 1, 2005 filing constituted only projected 2006 LSS data, and that Section 54.301(e) of the Rules requires ILECs to submit historical 2006 LSS data for true-up purposes by December 31, 2007. Hence, it does not appear that the actual amount of LSS due to Lexcom for 2006 is fully or finally determined until the December 31, 2007 true-up submission is made and reviewed.

Lexcom further notes that USAC has stated in its recent Comments in WC Docket No. 05-195 that some carriers have "over-projected" their LSS for the next calendar year in their Section 54.301(b) filings and that some carriers have failed to submit their actual LSS true-up data by the Section 54.301(e) deadline¹². USAC states that it currently accepts late-filed Section 54.301(e) true-up submissions to preclude all LSS support received by the ILEC from being rescinded, but that such out-of-period filings create additional administrative burdens and costs¹³.

It is clear to Lexcom that grant of the waiver request can easily be accommodated by USAC, without burden to any other carrier, within the existing universal service process. As

¹² *Comments of Universal Service Administrative Company*, WC Docket No. 05-195, *et al.*, October 18, 2005, page 158.

¹³ *Id*

noted above, the true-up process is used to correct projected data from ETCs to reflect carrier's actual LSS amounts at a later point in time¹⁴. As such, Lexcom's LSS disbursement, upon expedited action by the Commission, can be included and trued-up through the already established process.

C. Adverse Impacts upon Universal Service Goals

The loss by Lexcom of approximately \$439,736 in expected LSS for 2006 will be extremely onerous and disruptive, particularly because the company will have no offsetting reductions in its 2006 local switching costs. The purpose of the LSS universal service program is to provide cost recovery to small LECs for the costs of their switching investment and expenses. As such, LSS has been a substantial portion of Lexcom's recovery of its switching costs for many years¹⁵. The continued availability of LSS ensures that companies are not required to recover these relatively higher costs through intrastate, basic rates. As such, LSS thereby avoids potentially higher basic rates that would be contrary to the established universal service principles of affordability and comparability. Lexcom is likely to have no choice but to offset such a substantial revenue loss by significantly increasing its other revenue streams or by significantly decreasing its investment outlays. In either case, such offsets will have an adverse impact (in the short term and/or the long term) upon Lexcom's ability to provide quality services to its rural customers at affordable rates reasonably comparable to those in urban areas in accordance with the Commission's Universal Service goals.

¹⁴ 47 C.F.R. § 54.301(e)

¹⁵ For example, Lexcom received \$417,826 of LSS support for 2004 and expects to receive approximately \$401,880 for 2005.

III. Request for Expedited Action

Unless and until the Commission grants Lexcom's waiver request, it will be forced to forego its 2006 LSS cost recovery revenues. This support is needed and used by Lexcom to support its ongoing costs and capital improvements to upgrade its network and to provide advanced services. The required data has already been submitted to USAC, and it appears that USAC is fully capable of incorporating this data as a late-filed estimate, and/or as a figure to be included in the true-up process. Lexcom requests expedited action by the Commission so that USAC can be properly notified as soon as practical so that future settlements will reflect accurate LSS cost recovery.

IV. Conclusion

Lexcom regrets that their 2006 LSS projections were filed four days after the due date, and has taken steps to ensure this will not happen again. For the reasons stated herein, Lexcom submits that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will allow Lexcom to receive LSS disbursements for the year 2006 consistent with the statutory goal of preserving and advancing universal service for the rural customers served by the company. This result will be consistent with the public interest. Expedited action is requested to minimize the time that Lexcom will be prevented from receiving LSS cost recovery support that it expected to receive. Without the LSS support, it will be the customers of Lexcom that will be burdened with potential rate changes, curtailed upgrades, or delays in the availability of advanced services. With the grant of the waiver, Lexcom will merely receive the LSS that was intended under the universal service plan policies, and the grant of the waiver will not adversely affect any other carrier or customer.

Respectfully submitted,
LEXCOM TELEPHONE COMPANY

A handwritten signature in cursive script, reading "Gary M. Zingaretti", positioned above a horizontal line.

By

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